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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-116

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Section SPD 3.015 directs the State Public Defender to establish procedures for verification of financial information provided by applicants. Presumably, the board intends to promulgate many of these procedures as rules, as appropriate. See, generally, the board’s duties under s. 977.02, Stats., the definition of “rule” under s. 227.01 (13), Stats., and the requirement in s. 227.10 (1), Stats. The board may not avoid the requirements of ch. 227, Stats., by promulgating a rule in the form of s. SPD 3.015.

b. The provisions of the rule should be compared to provisions affecting ch. 977, Stats., contained in 1995 Wisconsin Act 27 (the 1995-97 Biennial Budget Act), which was signed into law after this rule was submitted to the Rules Clearinghouse. For example, s. SPD 3.015 states that the procedures **may** include, among other things, “obtaining social security numbers.” Section 977.06 (1m), Stats., as created by Act 27, generally **requires** a person seeking assigned counsel to provide the State Public Defender with his or her Social Security number and the Social Security numbers of his or her spouse and dependent children.

c. Section SPD 3.03 (2m) requires the income and assets of an applicant’s spouse to be counted unless the income and assets are inaccessible to the applicant. The provision creates a presumption that income and assets are inaccessible when the spouses are separated or when the spouse or the spouse’s minor child has a specified adverse interest. Section 977.07 (2) (a), Stats., requires any assets of the spouse of the applicant to be considered as if they were assets of the applicant, unless the spouse was the victim of a crime allegedly committed by the applicant. The rule is inconsistent with the statutory provision.

d. Is express statutory authority necessary for s. SPD 3.055? Compare s. 977.07 (2) (c), Stats., which expressly provides that if it is found that any asset was disposed of for less than its fair market value for the purpose of obtaining assignment of counsel, the asset is to be counted at its fair market value at the time it was disposed of, minus the amount of compensation received.

2. Form, Style and Placement in Administrative Code

a. The analysis of the rule provides minimal information. It would be helpful, for example, to link provisions in the rule to the specific recommendations in Legislative Audit Bureau report to which the rule responds.

b. All of the provisions in this rule should begin with a PD prefix rather than an SPD prefix.

c. In s. SPD 3.03 (1) (c), second sentence, “Provided, however, that” should be deleted. The last sentence of that paragraph should begin: “In this paragraph, a....”

d. Is there a need for an initial applicability provision for the rule?

e. Throughout the rule, “shall” should replace “must.” For example, see s. SPD 3.03 (1) (c) and (2m).

4. Adequacy of References to Related Statutes, Rules and Forms

In s. SPD 3.03 (2), it appears that the statutory site in the second sentence is incorrect. Should it be s. 49.19 (11) (a) 1., Stats.?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the board’s analysis, reference in the last line should be to “statutes” interpreted.

b. In the Note to s. SPD 3.015, “the” should be replaced by “s.” in the reference to s. SPD 3.015.

c. In s. SPD 3.038 (2), it is not clear what is “a similar federal or state needs-based financial assistance program.” Can these programs be listed in the rule?